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Consolidated and Reformed Workforce  
Development and Literacy Act (1976)

Education: National Endowment for the Arts and  
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# Consolidated and Reformed Workforce Development and Literacy Act (1976): Speech 03

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Issue: Drug Testing

Background: When the Workforce Development Act was debated on the Senate floor, Senator Ashcroft introduced an amendment to require drug testing of all program participants. **You opposed the amendment, but it was passed overwhelmingly.**

The House bill has no drug testing provision, and has asked the Senate to recede by changing the provision from “required” to “permissive.” Senator Ashcroft opposes this change. Also, Senator Kennedy believes the change is insufficient and that there should be a requirement that whatever test is chosen should be verified as reliable. This will probably mean that states would not choose to drug test program recipients simply because it would be very expensive to make sure that a test was reliable and did not falsely label an individual as a drug user.

Talking Points: I opposed this amendment on the floor, but my position did not prevail. I remain of the mind that we should agree to drop this provision.

## **SIX REASONS TO OPPOSE A FEDERAL DRUG TESTING MANDATE**

1. **Unfunded Mandate.** The provision is a costly and unfunded federal mandate. It would cost at least \$35 million each year to carry out such widespread testing, and another \$170 million to administer the requisite appeals process. Either state and local governments pay this \$200+ million, or providers will be compelled to use a portion of the limited federal funds provided under this bill.
2. **Preempts State Law.** This job training bill is designed to afford *greater* flexibility to state and local governments. But the Ashcroft amendment would move in the opposite direction -- it would preempt dozens of state laws and replace the judgments of state legislatures with a one-size-fits-all federal mandate.
3. **Deters Use of Job Training Services.** The threat of an intrusive drug test may deter drug users *and non-drug users* from seeking job training. We should encourage skill building and encourage the unemployed to become employed. We shouldn't erect barriers to these services. Further, community colleges and other smaller entities would be discouraged from providing job training services altogether if required to establish a complicated and costly testing program.
4. **False Positives.** As many as 5% of positive test results are inaccurate, even using the best technology. Studies of unregulated laboratories have found error rates of 30%. Thousands of Americans will be unfairly branded as drug users.
5. **Drug Treatment Often Unavailable.** The provision requires those who test positive for drugs to obtain drug treatment, but treatment is scarce. Only a third of Americans who need substance abuse treatment receive it due to limited insurance coverage and scarce public health funding. The FY96 appropriations bill will cut federal spending on drug treatment and prevention by 17% in a single year.
6. **Unconstitutional Invasion of Privacy.** This proposal represents an unwarranted intrusion into the privacy of the thousands of ordinary, drug-free Americans who utilize job training services. Applicants for other government services are not asked to submit to urine testing, and there is no reason to require testing for displaced defense workers and other law-abiding Americans who seek to improve their job skills. Indeed, as applied to training for non-safety sensitive jobs, the provision may violate the constitutional standards set by the Supreme Court's Skinner and Von Rabb decisions.

## ESTIMATED COSTS OF A FEDERAL DRUG TESTING MANDATE

The Ashcroft amendment represents a costly and unfunded mandate on state and local governments and other job training providers. A rough estimate suggests that it would cost in excess of \$200 million each year to carry out this mandate:

-- The **Substance Abuse and Mental Health Services Administration** estimates the average cost of a drug test performed in a federally certified lab at **\$35 per test** (average takes account of need for expensive confirmatory tests).

-- The Senate-passed provision requires "random" testing of applicants and "for cause" testing of participants. Although it is impossible to state with certainty the number of tests that would be administered each year, experience from the private sector suggests that **two-thirds of the 1.5 million job training applicants and recipients (1 million)** would, on average receive one test a year. **1 million x \$35 = \$35 million.**

-- But the **\$35 million** spent on actual testing would be only a fraction of this unfunded mandate. More costly would be the appeals process mandated by the provision. Approximately 55,000 individuals might reasonably be expected to appeal. This figure is derived by assuming that all individuals who receive false positives (5% of 1 million or 50,000) would seek an appeal, as would 10% of the true positives (true positives = 5% of all testees based on **National Institute on Drug Abuse** statistics, or 50,000; 10% of true positives = 5,000). **In total, 55,000 appeals could reasonably be expected.**

-- The costs of these appeals will be substantial because they entail significant administrative expense. Estimates of appeals processes in comparable government agencies suggests a price tag in excess of \$3,000 per appeal. For example, the **Equal Employment Opportunity Commission** spends approximately \$230 million to process 75,000 cases a year, an average of **\$3,070 per case**. Thus the aggregate cost of appeals by job training applicants and recipients could be expected to be about **\$170 million.**

The \$35 million required to administer drug tests, combined with the \$170 million required to administer an appeals process means that **the drug testing mandate in the Senate bill would cost state and local governments and other job training providers in excess of \$200 million each year.**

**The following states have drug testing laws, many of which would be preempted in whole or in part by a drug testing mandate in the federal job training program:**

<u>State</u>	<u>Source of Law</u>	<u>Would be preempted?</u>
Arkansas	Statute	No
California	Constitution	Yes
Connecticut	Statute	Yes
Delaware	Statute	No
Florida	Statute	Yes
Georgia	Statute	Yes
Hawaii	Statute	Yes
Illinois	Statute	Yes
Iowa	Statute	Yes
Kansas	Statute/Atty General	Yes
Louisiana	Statute	Yes
Maine	Statute	Yes
Maryland	Statute	Yes
Massachusetts	Common Law	Yes
Minnesota	Statute	Yes
Mississippi	Statute	Yes
Missouri	Statute	No
Montana	Statute	Yes
Nebraska	Statute	Yes
Nevada	Statute	Yes
New Jersey	Constitution	Yes
North Carolina	Statute	Yes
Oklahoma	Statute	No
Oregon	Statute	Yes
Rhode Island	Statute	Yes
South Carolina	Statute	No
Tennessee	Statute	Yes
Texas	Constitution	Yes
Vermont	Statute	Yes